PCIA Personal Communications Industry Association

VIA COURIER

March 18, 1998

Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
1919 M Street, NW Room 200
Washington, DC 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD No. 97-24 ("SWBT clarification request")

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & Order, CC Docket Nos. 96-98, 95-185 ("interconnection reconsideration order")

Formal Complaints of AirTouch Paging against GTE, File Nos. E-98-08, E-98-10

Formal Complaint of Metrocall against Various LECs, File Nos. E-98-14-18

Dear Ms. Salas:

Yesterday, Angela E. Giancarlo and Robert L. Hoggarth of the Personal Communications Industry Association ("PCIA"), together with Carl W. Northrop of Paul, Hastings, Janofsky & Walker, met with Jim Schlicting, Glenn Reynolds, Edward Krachmer and Tamara Preiss of the Common Carrier Bureau's Competitive Pricing Division. In the course of the meeting, the participants' discussion included issues related to the above-referenced proceedings.

The participants discussed the Common Carrier Bureau's December 30, 1997 letter in response to the SWBT clarification request. Secondly, we reviewed the status of the pending interconnection reconsideration order. Positions discussed were entirely consistent with comments filed and/or *ex parte* presentations made by PCIA in these dockets, all of which are contained in the public record. In addition, there were several presentation materials distributed. Copies of each are attached.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter for each referenced docket are hereby filed with the Secretary's office and a copy of this filing is being sent today to meeting

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participants. Kindly refer questions in connection with this matter to me at 703-739-0300.

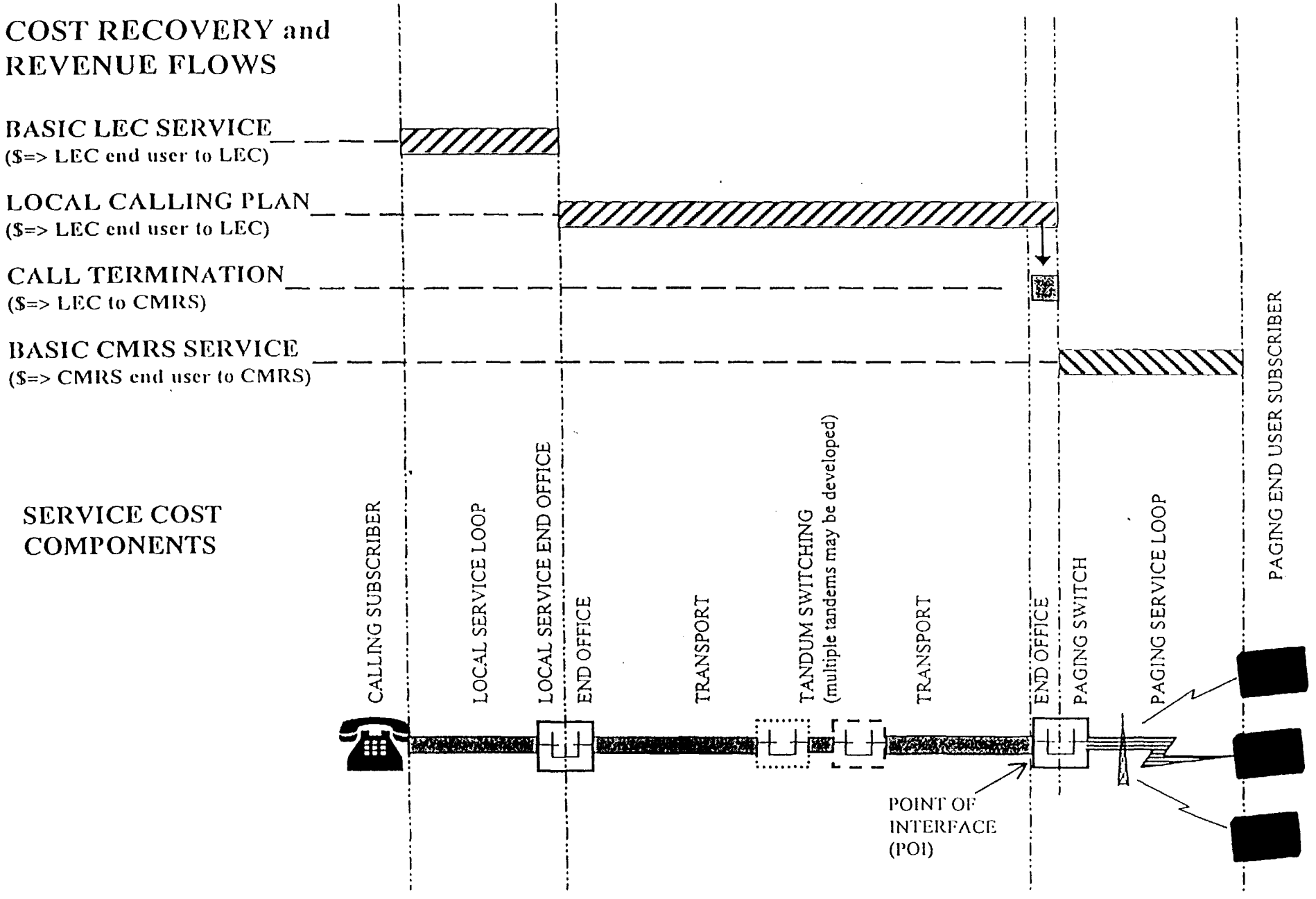
Respectfully submitted,

Angela E. Giancarlo, Esq.
Government Relations Manager

Attachments

cc: Robert Hoggarth
Edward Krachmer
Carl Northrop
Tamara Preiss
Glenn Reynolds
Jim Schlicting

LOCAL PAGE TERMINATION AND COMPENSATION FLOW



ATTACHMENT 1

OPPOSITION OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION TO THE APPLICATIONS FOR REVIEW

February 23, 1998

Jubon Engineering, P. C.

3816 Winters Hill Drive
Atlanta, Georgia 30360-1331
Telephone: 770-828-0120 Fax: 770-828-0108

TECHNICAL MEMORANDUM:

To: PageNet

Dated: 28 February 1996

From: Jan David Jubon, P. E.

Re: FCC Docket 95-185 - Mutual/terminating compensation for paging carriers; Discussion of adverse allegations to: Paging is an exchange service. Paging switches are end offices, PSTN and paging traffic terminate identically

Introduction[1]**:**

Since the issuance of the Second Report and Order in FCC Docket 93-252[2], a number of incumbent wireline telephone companies[3] have adamantly maintained that wireless paging service providers are not entitled to compensation for the traffic which they terminate from other carriers in the PSTN. Some of the justifications include representations that paging carriers do not provide public telecommunications exchange services, statements that neither paging carriers nor paging carriers' "paging terminals" provide switching services, and claims that paging messages terminate at the provider's "paging terminal", not with the paging provider's end users.

These assertions are simply wrong. Some background is appropriate to demonstrate how incorrect such statements really are.

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[1] The material presented in this "Technical Memorandum" addresses several of the issues under consideration in FCC Docket 95-185 as regard FCC licensed CMRS paging carriers. The material was originally prepared on behalf of an ad-hoc consortium of PageNet and other paging carriers. Various portions were presented as components of pre-filed direct and rebuttal testimony in a local regulatory proceeding during mid 1995. The original "Q and A" format and several component parts have been edited to provide a more report-like presentation.

[2] 9 FCC Rcd 1411 (1994)

[3] ... and a number of state regulators as well ...

Paging as an exchange service:

From the "beginning", common carrier paging[4] has been provided as a public. FCC licensed, common carrier, exchange level service. Private carrier paging and two-way services[5] have more recently been combined with common carrier paging and two-way services under the aegis of Commercial Mobile Radio Service (CMRS)[6]. In this same action which created the CMRS, the Commission strongly re-stated that CMRS paging and the other CMRS services were, indeed, public exchange telecommunications services.

Wireless/CMRS local service providers[7], competitive wireline local service providers, incumbent I-LECs, and the RBOC LECs all offer local exchange services which, except for loop technology are generically interchangeable. Accordingly, no wireless-wireline-incumbent-telco differentiation should exist in the rate or compensation structures utilized between these local service providers. Terminating compensation rate structures should be specified for end office switching, local transport, transport termination functions, and direct trunked and tandem switched transport in a manner similar, but not necessarily identical to FCC prescriptions for access services. Any appropriately interconnected wireless carrier[8] is entitled to per call, call duration, and provided-transport-distance based compensation for traffic terminated by that carrier regardless of the character of the traffic.

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4 47 CFR Part 22

5 47 CFR Part 90

6 9 FCC Rcd 1411 (1994)

7 Wireless/CMRS providers include paging carriers, cellular carriers, SMR/ESMR providers, PCS providers, and conventional two-way providers.

8 Actually, any exchange service provider connected in the traditional heirarchal network configuration.

PageNet is referred to Counsel for a more exhaustive summary of the regulatory citations and precedents establishing and justifying exchange service provider status for CMRS paging services.

Paging switchgear performs true PSTN end office switching functionality:

A very brief history of paging services and switchgear provides a springboard for understanding how allegations as to end office functionality might surface.

Many years ago, paging "terminals" were terribly simplistic devices which essentially automatically answered a single party telephone line served from a telephone company end office. The line was answered any time it rang. The caller generally then transmitted the identity of the desired paging customer by dialing "end-to-end" on the answered circuit using DTMF/(TouchTone®) signals. With the use of "end-to-end" dialing, calls were considered complete when the paging terminal answered the line. Later systems began to employ the then newly available DID capabilities offered by telephone companies to identify the called pager. In both cases, a caller's dialed digits were translated into an elementary, encoded alerting signal causing a beep, or beep with the caller's voice message to be transmitted by the paging radio base station. In many cases, the paging equipment did not even check for dialed digit validity. Such is not at all the case with today's paging switchgear.

Paging call control and switching has evolved to the point that a single paging switching system may control calls to tens or even hundreds of thousands of customers using any one of tens to hundreds of independent service regions and radio channels. Customers in any service region and on any radio channel may be addressed through any PSTN-connecting trunk group. Customers may even interact with the paging switch to enable/disable advanced user features and vertical services so that calls are completed to the customer's choice of functions and services, including the forwarding of calls to other PSTN addresses.

Because of the complexity of the switching and network services provided by current paging switches, SS#7 interfaces with the PSTN are being perfected by several vendors. DS-1 interface with the PSTN is the norm for many modest to large operators, and advanced call and digital message forwarding techniques are commonplace. Most

important, however, is that as noted above, each paging receiver/user is uniquely identified by its own, individual world telephone number[9] which allows that pager's end user, on whatever radio channel(s) and within whatever service region(s) the end user equipment operates, or via other paging switch-based vertical services, to be individually addressed and communicated with through the paging switching machine.

Claims that a state of the art paging "terminal" is not a "switching machine" in the PSTN are countered by the following citations from what are normally regarded as fairly reliable sources ...

One definition for "switching" is provided by Bell Telephone Laboratories in its text *Engineering and Operations in the Bell System*, (1977), at page 690, as being "... the process of connecting together appropriate lines and trunks to form a desired communications path between two station sets [subscriber units]. Included are all kinds of related functions such as sending and receiving signals, monitoring the status of circuits, translating addresses to routing instructions, alternate routing, testing circuits for busy condition, and detecting and recording troubles". All of PageNet's paging switchgear provides functionality which conforms to this definition.

A more recent summary definition of network end office functionality may be drawn from Bellcore's *BOC Notes on the LEC Networks - 1994*, SR-TSV-002275, Issue 2, April 1994 at section 4.1.3.1. It states ...

> End office switching systems provide access to the Message Telecommunications Service (MTS) network. A ... user can originate or receive communications to or from the network via an end office. [emphasis added]

Further, it can be demonstrated that paging switchgear, and more particularly PageNet's switches, meets the relevant and necessary technical and operational specifications for network end office functionality as published in *Notes ... - 1994*, Section 6, and in Bellcore's extensive document/specification *LATA Switching Systems Generic Requirements (LSSGR)*, FR-NWT-000064.

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[9] In a limited number of instances, advanced, but still comparatively inefficient forms of end-to-end signaling are employed to conserve numbering resources, notably with 800/888 toll free pager addresses.

Supplementing the pre-divestiture Bell Laboratories definition, and in concert with the Bellcore documents cited, the Industry Carriers Compatibility Forum (ICCF) and the FCC-endorsed Industry Numbering Committee (INC) has, at Page 23 of the recent revision of the *Central Office Code (NXX) Assignment Guidelines*, Document INC 95-0407-008 (formerly ICCF 93-0729-010), Revision of 7 April 1995, defined "switching entity" as "an electromechanical or electronic system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating PSTN calls. A single switching system may handle several central office codes". Again, all of PageNet's paging switchgear provides functionality which conforms to this definition.

Calls "terminate" with paging end users, not in the paging switch:

Those in the opposition who may concede that in fact, paging terminals may just qualify as network switching entities, still argue that paging switchgear and paging carriers do not perform the "call terminating functions" which other "co-carriers" perform. This opposition lacks any basis for its statements.

As an initial matter, if paging calls "terminated" in a paging terminal or in the paging switch or end office (hereinafter "paging switch") rather than with a destination end user, a PSTN-handled message destined to a paging end user simply would not be capable of advancing past the paging switch. The intended end user would never receive his page ... it is just about that blatant.

Paging carriers and paging systems do, in fact, perform all call terminating functions performed by any wireless cellular/SMR/ESMR/PCS (generally, CMRS) carrier, competitive wireline carrier, or conventional Bell or independent wireline carrier, and do so in the same manner. For any local service provider, the "identical" terminating functions are, without exception, ...

1. the terminating service provider must receive the call and the unique identity of its addressee/destination at some point of traffic interchange (POI) with another telecommunications company

2. the terminating service provider must transport that call and its address information from the point of traffic interchange to its end office switching entity

3. the terminating service provider may, for economic, operational, or technical purposes, elect to aggregate traffic from points of interchange with different tributary service providers to potentially multiple "in-company" destinations through its own "terminating 'access'" tandem switching system(s). Tandem switching is a discretionary capability which typically is lumped together with performance of the overall "terminating 'access'" function

4. the terminating service provider must receive the call service request and address/destination information in its end office switching entity in a compatible, standard format

5. the terminating service provider end office must examine the address/destination information for ... .

a. being a valid address, and if the address is invalid, providing advisory of that fact to the caller

b. being an address which is indeed in service, and if the address is not in service, providing advisory of that fact to the caller

c. determining that a path can be established for continuing movement of the call toward its addressee/destination, and if the path is not in service, providing advisory of that fact to the caller

d. establishing requirements for translation and/or encoding of the address and destination information into forms compatible with the systems' end users and loop-medium/post-switching selection methodology

6. Once the terminating service provider end office has examined the address/destination information, the end office must ...

a. connect (i.e.: switch) the call to the path chosen and reserved by the path determination function noted above

b.. commence actually alerting the end user of the presence of a call, assuming that the call remains within the switching system and is not forwarded elsewhere

c. issue an electrical/electronic report of successful connection of the call to its destination addressee to the call sender to indicate that charging has commenced

d. compatibly convey the call information content to its addressee

e. monitor the call for disconnection or additional service request signals and perform those additional functions as appropriate

f. disconnect the call when appropriate

And again, all of PageNet's paging switchgear provides functionality which conforms to these definitions.

Other interesting but unfounded allegations:

Turning to the more abstract anti-paging-co-carrier-status allegations, at least one local jurisdiction only considers carriers which have both call originating and call terminating functionalities, and originating call access to operator services and to E-9-1-1 services as carriers eligible for terminating compensation. In the paging services, which in few cases exhibit less than wholly terminating traffic, and which possess effectively no real-time voice transmission capability, basing eligibility for receiving terminating compensation upon bi-directional traffic handling capability is, in the most favorable terminology, novel. Normally, if one uses another's service, one pays for it.

Further, paging is entirely incompatible with and incongruous to E911 service. E911 is a service based solely on the ability to originate an emergency call using abbreviated, standard format dialing, wherein the caller is automatically associated with and wholly identified by the fixed, land location and governmental jurisdiction within which the calling telephone number is situated. Thus identified, E911 calls are routed to the pertinent E911 PSAP (public safety answering point). Paging end users are by definition, itinerant, and have no inherent or derivable means of establishing even rough geographic situation data. Moreover, with the possible exception of some narrowband PCS equipments[10] still under development, paging customers cannot originate any calls using paging equipment or a paging system. In short, E911 is, at least at this time, irrelevant to paging services.

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10 Such systems are sometimes referred to as "two-way-paging".

As noted. the FCC has stated unequivocally that CMRS (Commercial Mobile Radio Service) paging carriers licensed under Parts 22 or 90 of its Rules are as entitled to mutual [terminating] compensation as any other FCC licensed CMRS provider for traffic terminated on behalf of another telecommunications entity. There is no requirement or equivocation favoring bidirectionality of traffic flow. In fact the Order quite specifically and simply reads that any wireless carrier shall be compensated for traffic delivered to it for termination by another carrier, a position supported by a long supporting lineage of predecessor rulings and Orders.

Summary:

Paging carriers, like all CMRS licensees, are positioned with the PSTN as fully capable and responsible exchange service providers, entitled to receive terminating compensation for all traffic handled for other carriers, such compensation reflective of the uniform application of a standard set of rate elements for all exchange service providers to the economic and operational specifics pertinent to the particular carrier.

Paging carrier switching machines are fully qualified end office "switching entities" in the PSTN performing all necessary network "terminating 'access'" functions. Calls handled by paging switches terminate with their intended destination end user, not within the paging switch as alleged by some. LEC "requirements" for qualification for terminating compensation based upon bi-directional traffic propagation capability. access to operator services, and/or E-9-1-1 capability are irrelevant and unfounded.

CMRS paging carriers, e.g.: PageNet, are as entitled to terminating compensation as any other FCC licensed CMRS provider.

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AFFIDAVIT

County of DeKalb)
) ss:
State of Georgia)

Jan David Jubon, being first duly sworn, says ...

... that he is a professional engineer registered and/or licensed in Georgia, the District of Columbia, and six other states to practice electrical engineering;

... that he has been continuously employed in the field of telecommunications as an engineer or engaged in the practice of telecommunications related electrical engineering since 1968;

... that his credentials are a matter of record with the Federal Communications Commission (FCC) in Washington, D.C.;

... that the attached "Technical Memorandum" dated 28 February 1996, addressed to PageNet and concerning certain matters in FCC Docket 95-185, was prepared by him;

... that the "Technical Memorandum" was prepared at the request of PageNet;

... that he is familiar with the material contained within the aforementioned "Technical Memorandum"; and

... that the professional opinions and conclusions expressed in the attached "Technical Memorandum" are true and correct by his personal knowledge, and are freely given without duress.

by: **Jan David Jubon, P.E.**

Subscribed to and sworn before me this First day of March 1996.

Notary Public
(SEAL)

February 23, 1998

Arch Communications Group, Inc.
AirTouch Communications, Inc.
AirTouch Paging
Oppositions to Applications for Review
CCB/CPD No. 97-24

Attachment A

A History of LEC/Paging Interconnection: An Ongoing 30-Year Struggle to Obtain Reasonable, Non-Discriminatory, and Cost-Based Interconnection

The current application for review proceeding is actually a continuation of a 30-year struggle by the paging industry to obtain reasonable, non-discriminatory, and cost-based interconnection from local exchange carriers ("LECs"). This history reveals a pattern and practice whereby the Commission enters an interconnection order; LECs respond either by ignoring the order or by developing a new regulatory strategy to stall reasonable interconnection with paging carriers; and this LEC response requires the Commission to enter yet another interconnection order addressing the most recent LEC actions, after which the process is then repeated. The arguments made by the petitioning LECs in this proceeding typify the types of problems paging carriers have encountered in attempting to obtain fair and reasonable interconnection from LECs.

A. Industry Inception to the Guardband Order. The mobile radio service industry had its birth in 1949 when the Commission first allocated spectrum for the Domestic Public Land Mobile Radio Service.[1/] From the beginning, and over the objection of the LEC industry, the Commission decided to pursue competitive policies for this market. It accomplished this end by

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1 *General Mobile Radio Service*, 14 F.C.C. 1190 (1949).

allocating separate blocks of spectrum for LECs and "miscellaneous" common carriers, which later became known as radio common carriers ("RCCs").[2]

Paging networks were deployed beginning in the 1960s. LECs introduced their paging services, and independent RCCs attempted to offer competing services. Evidence before the Commission at the time demonstrated that numerous paging carriers lost most of their customers after LECs entered the market, and from the outset independent RCCs had difficulty obtaining the interconnection they needed from the LECs. For example, LECs developed what is now known as Type 1 interconnection for their paging service, but they refused to provide this same interconnection to their competitors, under the theory that RCCs had "no need" for it.[3] LECs also offered a toll free capability with their paging services so callers could dial their customers without incurring toll charges, but once again refused to provide the same capability to RCCs so they could provide a competing service.

The Commission attempted to address these problems in its seminal 1968 *Guardband Order*, the first LEC interconnection decision ever released.[4] In this *Order,* the Commission directed LECs to make available to RCCs on equal terms and conditions the same interconnection arrangements they were making available to their own paging systems, including

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2 *Id.* at 1197 and 1228. The Commission would later describe this action as one of the first pro-competitive policies it ever adopted. *See Cellular Lottery Rulemaking,* 98 F.C.C.2d 175, 196 (1984).

3 *Amendment of Part 21 of the Commission's Rules,* 12 F.C.C.2d 841, 846 (1968), *recon. denied,* 14 F.C.C.2d 269 (1968), *aff'd, Radio Relay* v. *FCC,* 409 F.2d 322 (2d Cir. 1969) ("*Guardband Order*").

4 *Id.*

what are now known as Type 1 and toll free arrangements. To address problems encountered with the discriminatory pricing of interconnection, the Commission required that LEC charges to RCCs be the same as those allocated to their own paging affiliates, and it later cautioned LECs "to honor the spirit as well as the letter of the conditions and [to] refrain from any unfair practices."[5]

B. The LEC/Paging Memoranda of Understanding. The *Guardband Order* did not achieve its goal of resolving the LEC/paging interconnection problems; to the contrary, the number of interconnection complaints filed by RCCs increased following the *Order.* The Commission acknowledged these problems and directed its staff to address the matter, which thereafter convened a series of meetings between the LEC and RCC industries.[6] These meetings resulted in the two industries executing a "Memorandum of Understanding" setting forth the details of interconnection between LECs and paging carriers.[7]

In this Memorandum, the LECs agreed, among other things, to treat RCCs as carriers rather than end users, noting that application of state end user tariffs was "inappropriate."[8] In addition, LECs agreed to provide necessary interconnection upon request — as had been ordered in the *Guardband Order*. LECs further agreed to provide telephone

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5 *Applications of Gerard T. Uht for a Construction Permit*, 35 F.C.C.2d 140 (1972). *See also Radio Relay,* 409 F.2d at 327.

6 *See Offer of Facilities for Use by Other Common Carriers,* 52 F.C.C.2d 727 (1975)(Docket 20099 Settlement Agreement).

7 This first Memorandum of Understanding is reprinted beginning at 63 F.C.C.2d 92.

8 First Memorandum of Understanding, 63 F.C.C.2d at 92.

numbers which RCCs could assign to their customers and to review their prices for both telephone numbers and Type 1 interconnection. The "meet point" separating the LEC and paging networks was designated at the paging switch.[9]

The Memorandum of Understanding was then submitted for Commission review. In early 1977 the Commission stated that the Memorandum was "an acceptable accommodation" of the "large number of problems which have been, at the very least, endemic to interconnection agreements for the better part of the past decade."[10] However, the Commission was careful in noting that it was only "accepting" the Memorandum "without necessarily approving it" and that acceptance "should not be construed to mean that the terms . . . are, or will always be considered lawful under the Communications Act."[11]

The first Memorandum expired in 1980, and the two industries negotiated a new three-year Memorandum of Understanding in 1980.[12] This second Memorandum was similar to the first, but LECs agreed to reduce their prices for telephone numbers and to offer a single number access plan whereby paging carriers with extended service areas could provide service

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9 *Id.* at 97 (defining the "point of connection" as the point "between the connecting circuits provided by the [LEC] and the facilities of the [paging] carrier."). FCC rules currently define "meet point" as the "point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends." 47 C.F.R. § 51.5.

10 *See Interconnection Between Wireline Telephone Companies and Radio Common Carriers,* 63 F.C.C.2d 87, 89 (1977)("*MOU I Order*").

11 *Id.* at 90.

12 This second Memorandum is reprinted beginning at 80 F.C.C.2d 357.

with a single number at lower cost. In 1980 the Commission "accepted" (but did not "approve") the second Memorandum as "an acceptable accommodation of long outstanding issues."[13]

C. New Interconnection Problems and New Interconnection Orders. In 1983, on the eve of divestiture and as the second Memorandum was about to expire, LECs began advising paging carriers that the Memorandum would not be renewed and that they would instead be treated either as LEC end user customers or as interexchange carriers subject to access charges. The Commission quickly rejected these LEC arguments in 1984, reaffirming that paging carriers were local carriers, not end users or interexchange carriers.[14] Thereafter, some LECs negotiated new paging interconnection contracts; other LECs decided to provide paging interconnection without contracts.

In establishing the cellular industry a few years earlier, the Commission adopted the same non-discriminatory LEC interconnection policies it had imposed 15 years earlier for LEC/paging interconnection in the 1968 *Guardband Order*.[15] Many LECs thereafter ignored these requirements by, among other things, refusing to provide to non-LEC-affiliated cellular carriers newly-developed Type 2 interconnection and necessary telephone numbers and NXX

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13 *See Interconnection Between Wireline Telephone Companies and Radio Common Carriers,* 80 F.C.C.2d 351 (1980)("*MOU II Order*").

14 *See MTS/WATS Market Structure,* CC Docket No. 78-72, Second Reconsideration Order, 97 F.C.C.2d 834, 882 (1984).

15 *See Cellular Communications Systems,* Report and Order, 86 F.C.C.2d 469, 495-96 (1981); Reconsideration Order, 89 F.C.C.2d 58, 80-82 (1982); and Further Reconsideration Order, 90 F.C.C.2d 571, 576-77 (1982).

codes.[16] These and other disputes compelled the Commission to release in 1986 a Cellular Interconnection Policy Statement.[17] In this Statement, the Commission re-affirmed that cellular carriers could interconnect using either Type 1 or Type 2 connections; that LECs may not treat cellular carriers as an end user customer; that LECs may not impose recurring charges for use of telephone numbers; and that LECs must negotiate with non-affiliated cellular carriers in good faith, the Commission stating:

> [T]he terms and conditions [of interconnection are] to be negotiated in good faith between the cellular operator and the telephone company.[18]

As the Commission later explained, LECs were to file interconnection tariffs, if at all, "only after the co-carriers have negotiated agreements on interconnection."[19]

The next year, the Commission clarified that its cellular interconnection policies applied with equal force to paging carriers and other RCCs.[20] LECs thereafter asked the Commission to reconsider the decision arguing, among other things, that it was unreasonable for

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16 *See, e.g.*, Michael K. Kellogg, John Thorne, Peter Huber, *Federal Telecommunications Law* at § 13.3.3 (1992).

17 *See* FCC Policy Statement on Interconnection of Cellular Systems, Appendix B to *Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* 59 R.R.2d 1275 (1986).

18 *See* FCC Policy Statement No. 3. The FCC later determined that it possesses "plenary jurisdiction . . . to require that the terms and conditions of cellular interconnection must be negotiated in good faith." *See Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* 2 FCC Rcd. 2910, 2912 ¶ 21(1987(("*LEC/CMRS Interconnection Order*").

19 *LEC/RCC Interconnection Order,* 2 FCC Rcd. at 2916 ¶ 56.

20 *LEC/RCC Interconnection Order,* 2 FCC Rcd. at 2913 ¶¶ 23-26.

LECs to provide Type 2 connections to paging carriers. The Commission rejected these LEC arguments in 1989, reaffirming that LECs "may not dictate an RCC's type of interconnection."[21] The Commission also reaffirmed that LECs should not file RCC interconnection tariffs "before the co-carriers have conducted good faith negotiations on the interconnection agreement," and that "a landline company's filing of a tariff before an interconnection agreement has been negotiated could indicate a lack of good faith."[22]

Few LECs complied with these orders. Among other things, few LECs were willing to enter into interconnection negotiations with paging carriers, directing paging carriers to purchase interconnection from end user tariffs — a position which the Commission previously rejected and a position which even earlier the LEC industry had agreed was "inappropriate."[23] In addition, some LECs continued to refuse to provide Type 2 interconnection to paging carriers.[24]

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21 *See Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 4 FCC Rcd. 2368, 2376 ¶ 47 (1989)("*LEC/RCC Interconnection Reconsideration Order*").

22 *Id.*, 4 FCC Rcd. at 2370-71 ¶¶ 13 and 14. Although the paging industry finally gained the right to use the more efficient Type 2 interconnection, this victory provided little relief as a practical matter. First, the FCC's decision did not provide meaningful relief to existing paging customers, who would have been forced to change their pager numbers had their serving paging carrier switched to Type 2 interconnection. In addition, LECs often priced their Type 2 interconnection in a way which made it economically unattractive to many paging carriers. Finally, until the fall of 1996 some LECs charged exorbitant NXX code opening fees for Type 2 interconnection. Indeed, some LECs continued to ignore these FCC orders altogether. *See, e.g., Bowles* v. *United Telephone*, 12 FCC Rcd. 9840 (1997)(FCC orders United to provide Type 2 interconnection to paging carrier).

23 *See* note 8 *supra* and accompanying text.

24 Indeed, LECs were unlawfully refusing to provide Type 2 interconnection to paging carriers as recently as last year. *See Bowles* v. *United Telephone*, 12 FCC Rcd. 9840 (1997).

Moreover, many LECs still did not charge cost-based prices for telephone numbers. For example, even today, a decade later and after the Commission repeated in 1996 its admonition that LEC charges for numbers, if any, must cost based,[25] petitioner Ameritech charges a low of 2¢ monthly per number in Illinois; 17¢ in Ohio; 18¢ in Wisconsin; and a high of 22¢ monthly per number in Indiana.[26] In stark contrast, many LECs have determined that their number costs are so minuscule that they do not charge Arch anything for telephone numbers. BellSouth, which recently completed a cost study at Arch's request, reduced its monthly number charges from 50¢ to 3¢ for a block of 100 numbers — or 1/30¢ per number *vs.* the 22¢ Ameritech charges in Indiana for each number each month.

D. The 1993 Act and Commission Rule 20.11. In 1993 Congress decided that a new "Federal regulatory framework" was necessary for paging and other commercial mobile radio services ("CMRS"), noting that "mobile services . . . by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[27] Among other things, Congress gave the Commission new CMRS authority in Section 332(c) of the Communications Act and it amended Section 2(b), which ordinarily limits Commission jurisdiction

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25 *See Second Local Competition Order*, 11 FCC Rcd. 19392, 19538 ¶ 333 (1996)("The Commission has already stated that telephone companies may not impose recurring charges solely for the use of numbers.").

26 Century Telephone in Ohio charges Arch *$1.04 monthly for each telephone number* when four other LECs in that state charge nothing for numbers (vs. the 17¢ Ameritech charges in Ohio).

27 H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess., 490 (1993); H.R. Rept No. 111, 103 Cond., 1st Sess., 260 (1993). CMRS is defined in 47 U.S.C. § 332(d)(1) and 20 C.F.R. § 20.3. The paging services Arch and AirTouch provide are considered CMRS. *See* 20 C.F.R. § 20.9(a)(6).

over intrastate services so the Commission could establish this new "Federal regulatory framework."

The Commission adopted rules implementing these new Communications Act amendments in 1994.[28] Among other things, it adopted Rule 20.11(b) which requires LECs to compensate CMRS providers — including paging carriers — for terminating LEC traffic on CMRS networks:

> A local exchange carrier *shall* pay reasonable compensation to a [CMRS] provider in connection with terminating traffic that originates on facilities of the local exchange carrier.[29]

Insofar as incumbent LECs are required to pay paging carriers for terminating LEC traffic over paging networks, it stands to reason that LECs cannot charge paging carriers for the facilities the LEC uses in transporting LEC traffic to the paging network. Otherwise, the LEC facilities charges would cancel out the compensation mandated by Rule 20.11. Nevertheless, every LEC with which Arch and AirTouch interconnect ignored the requirements of Rule 20.11.

The Commission commenced a new rulemaking proceeding the next year (CC Docket 95-185) because of a concern that LECs were not providing to CMRS providers interconnection consistent with its past rulings.[30] The Telecommunications Act of 1996 was

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28 *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* GN Docket No. 94-253, Second Report and Order, 9 FCC Rcd. 1411 (1994)("*Second CMRS Report and Order*").

29 47 C.F.R. § 20.11(b)(1)(emphasis added).

30 *See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket No. 95-185, Notice of Proposed Rulemaking, 11 FCC Rcd. 5020 (1995).

enacted shortly thereafter, and the Commission consolidated this newest LEC/CMRS interconnection proceeding into its rulemaking implementing the local competition provisions of the 1996 Act (CC Docket No. 96-98).

In August 1996 the Commission determined that LECs had been violating Rule 20.11 by refusing to compensate CMRS providers for terminating LEC traffic on CMRS networks and by charging CMRS providers for the costs LECs incurred in delivering LEC traffic to CMRS networks, such as LEC facilities charges.[31]

E. The 1996 Act and the First Local Competition Order. Congress essentially incorporated the requirements of Rule 20.11 into the 1996 Act, imposing on LECs the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[32] In this regard, Congress determined that "each carrier" should recover its costs "associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[33] The Commission implemented this Act in its seminal August 1996 *First Local Competition Order.*

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31 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket No. 95-185, First Report and Order, 11 FCC Rcd .15499, 16044 ¶ 1094 (1996)("*First Local Competition Order*") (emphasis added), *rev'd in part on other grounds, Iowa Utilities Board* v. *FCC,* 120 F.3d 753 (8th Cir. 1997), *cert. granted,* Nos. 97-826 *et al.* (Jan. 26, 1998).

32 47 U.S.C. § 251(b)(5).

33 47 U.S.C. § 252(d)(2)(A)(i).

In this *Order,* the Commission adopted another rule, Rule 51.703(a), requiring LECs to compensate CMRS providers for terminating LEC traffic over CMRS networks.[34] The Commission made abundantly clear that this LEC compensation obligation extended to paging carriers:

> LECs are obligated . . . to enter into reciprocal compensation arrangements with *all* CMRS providers, *including paging carriers*, for the transport and termination of traffic on each other's networks.[35]

The Commission also adopted Rule 51.703(b), the flip-side of Rule 51.703(a), to ensure LECs no longer charged CMRS providers for the costs LECs incur in transporting LEC traffic over LEC networks.[36] In this regard, the Commission ruled that "[a]s of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without

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34 Rule 51.703(a) provides that "[e]ach LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting carrier." 47 C.F.R. § 51.703(a). The Eighth Circuit has expressly affirmed this rule as applied to LEC/CMRS interconnection. *See Iowa Utilities Board,* 120 F.3d at 800 n.21.

35 *First Local Competition Order,* 11 FCC Rcd. at 15997 ¶ 1008 (emphasis added). *See also id.* at 16043 ¶ 1092 ("[P]aging providers, as telecommunications carriers, are entitled to mutual compensation for the transport and termination of paging traffic.").

36 Rule 51.703(b) provides that a "LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b). The Eighth Circuit also expressly affirmed this rule as applied to LEC/CMRS interconnection. *See Iowa Utilities Board,* 120 F.3d at 800 n.21.

charge."[37] The Commission further made abundantly clear that this prohibition included LEC facilities charges:

> The interconnecting carrier [such as a paging carrier] should not be required to pay the providing carrier [such as a LEC] for one-way facilities . . . which the providing carrier owns and uses to send its own traffic.[38]

In response to this *Order* and these rules, some LECs stopped imposing facilities charges on Arch and AirTouch. Other LECs, including the petitioning LECs, have continued to impose these charges — charges which violate both the Communications Act and Rules 20.11 and 51.703(b).

F. LEC Challenges to the First Local Competition Order. The LEC industry challenged the *First Local Competition Order* as applied to LEC/CMRS interconnection in two forums. Some appealed to the Eighth Circuit; others asked the Commission to reconsider its decision.

On appeal, LECs argued that the Commission did not have the authority under the 1996 Act to adopt regulations such as Rule 51.703. The Eighth Circuit agreed with this position as applied to LEC/LEC interconnection, but held that the Commission had special, separate powers over LEC/CMRS interconnection:

> Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by [CMRS] providers, and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe the

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37 *First Local Competition Order*, 11 FCC Rcd. at 16016 ¶ 1042.

38 *Id.* at 16028 ¶ 1062.